



EMPLOYMENT TRIBUNALS

Claimant: MS B F Shahgaldi
Respondent: Guildford College of Further and Higher Education
Heard at: Reading **On:** 2 January 2019

Before: Employment Judge Gumbiti-Zimuto
Representation:
For the Claimant: In Person
For the Respondent: Mrs B Huggins (Counsel)

RESERVED REMEDY JUDGMENT

1. The respondent is ordered to pay to the claimant the sum of £44175 in compensation for unfair dismissal comprising of a basic award in the sum of £8,622 and a compensatory award £35553.
2. The respondent is ordered to pay to the claimant the sum of £8477.13 in compensation for breach of contract (notice pay). The award for notice pay is a gross amount.
3. The respondent is ordered to pay to the claimant the sum of £2597.83 in respect of holiday pay. The award for holiday pay is a gross amount.

REASONS

Correction of clerical mistakes and accidental slips

1. Rule 69 of the Employment Tribunals Rules of Procedure 2013 provides that: An Employment Judge may at any time correct any clerical mistake or other accidental slip or omission in any order, judgment or other document produced by a Tribunal. If such a correction is made, any published version of the document shall also be corrected. If any document is corrected under this rule, a copy of the corrected version, signed by the Judge, shall be sent to all the parties.
2. The judgment sent to the parties on the 10 May 2018 contained an error. The error is paragraph 2 of the reserved judgment which reads: "The claimant's claims for unlawful deduction from wages and wrongful dismissal are dismissed." The respondent had in fact conceded the claimant's complaints about holiday pay in the sum of £2597.83 and notice pay in the sum of £8477.13. These are gross figures. The judgment sent to the parties has been amended pursuant to rule 69

as follows: "The claimant's claims for unlawful deduction from wages and wrongful dismissal succeed."

Basic award

3. It is agreed that that the claimant is entitled to a basic award in the sum of £8622.

Compensatory loss

a. Mitigation of loss

4. The claimant is expected to mitigate the losses she suffers as a result of unfair dismissal. The tribunal will not make an award to cover losses that could reasonably have been avoided. The claimant is expected to search for other work and will not recover losses beyond a date by which the tribunal concludes she ought reasonably to have been able to find new employment at a similar rate of pay. The burden of proving a failure to mitigate is on the respondent. It is insufficient for a respondent merely to show that the claimant failed to take a step that it was reasonable for them to take: rather, they have to show that any such failure was unreasonable.
5. The tribunal has to consider; what steps the claimant should have taken to mitigate her losses; whether it was unreasonable for the claimant to have failed to take any such steps; and if so, the date from which an alternative income would have been obtained.
6. The claimant states that she applied for work after her dismissal. She denied any suggestion that she first applied for work in September 2017. The claimant gave evidence of her efforts to find alternative employment. I accept the evidence given by the claimant. I am satisfied that the claimant has taken reasonable steps to mitigate her losses. The claimant remains unemployed despite the fact that she has continued to make attempts to find new employment.

b. Claimant's intention to continue working

7. During the liability hearing the claimant said: "I would have wanted to work for another year. I would have wanted to continue to teach young people."
8. The claimant was questioned about this during this remedy and stated that she thought she said and intended to say was that she intended to work for at least one more year. The claimant went on to say that she is not ready to retire and wanted to continue working in teaching in some capacity. I accept the claimant's evidence as stated during the remedy hearing. There is not any conflict between what the claimant said during the liability hearing and what she said during the remedy hearing.
9. If the claimant had not been dismissed she would have continued to work for the respondent for at least one year.

c. Loss of Statutory rights

10. The respondent accepts that the claimant is entitled to an award of compensation for loss of statutory rights. The sum of £480 has been agreed by the parties.

d. Loss of earnings and pension

11. The claimant's loss of earning from the 1 December 2018 until the date of the hearing £35,095.29 and pension loss, in the form of employers' contributions, of £3234.51.

e. Future loss of earnings

12. The claimant is now the age 69 years: she was age 67 years when she was dismissed. I am satisfied that the claimant would have continued in employment for a period of at least one year after July 2016. The claimant would have given up working if she found a way to keep herself occupied teaching young people. The claimant in my view would not have simply given up work. However, in the light of the effect of section 124 of the Employment Rights Act 1996 I have not gone on to consider the extent of any award of compensation in respect of future loss of earnings.

f. College Fees and expenses

13. The claimant has been studying for a Health and Safety Diploma. The respondent has paid the claimant's exam fees and pays her travel expenses for attending workshops in London. The sums that the claimant claims in respect of these sums are £136 for travel and £405 in respect of exam fees.

14. The amount that the claimant is entitled to recover in respect of the compensatory award is therefore £38870.80

g. Grossing up

Basic award = £8,622 (Taxable)

Compensatory award = £ 38870.80 (Taxable)

Tax free element = £30000

15. In carrying out a grossing up calculation on these figures I have taken the basic award and added it to the amount of the compensatory award to be grossed up (i.e. the amount over £30000). I arrive at the figure £17492.80. The relevant rate of tax in this case is 20%. To arrive at the grossed up sum I have multiplied by 100/80. I arrive at £21866. The grossed-up sum has been added to the tax free amount to get the total award of £51866. Of this figure the sum of £8622 is the basic award. The compensatory award is therefore £43244. By virtue of section 124 (1ZA) the statutory cap applies on this award and is limited to £35553.

16. The award of the tribunal is therefore:

- a. Unfair dismissal: £44175
- b. Holiday pay £2597.83
- c. Notice pay £8477.13

Total award: £62940.96

Employment Judge Gumbiti-Zimuto

Date: 2 January 2019

Sent to the parties on:

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For the Tribunals Office